

**State of California
Office of Administrative Law**

In re:
Occupational Safety and Health (Cal-OSHA)
Division

Regulatory Action:

Title 08, California Code of Regulations

Adopt sections:

Amend sections: 14300.35, 14300.41

Repeal sections:

**NOTICE OF APPROVAL OF EMERGENCY
REGULATORY ACTION**

**Government Code Sections 11346.1 and
11349.6**

OAL Matter Number: 2019-0419-01

OAL Matter Type: Emergency Readopt (EE)

The Division of Occupational Safety and Health submitted this emergency action to conform regulations addressing the electronic recording and reporting of occupational injuries and illnesses with corresponding federal Occupational Safety and Health Administration regulations.

OAL approves this emergency regulatory action pursuant to sections 11346.1 and 11349.6 of the Government Code.

This emergency regulatory action is effective on 5/1/2019 and will expire on 7/31/2019. The Certificate of Compliance for this action is due no later than 7/30/2019.

Date: April 25, 2019



Richard L. Smith
Senior Attorney

For: Holly Pearson
Acting Director

Original: Juliann Sum, Chief
Copy: Willie N. Nguyen

NOTICE PUBLICATION/REGULATIONS SUBMISSION

(See instructions on reverse)

STD. 400 (REV. 04-2013)

OAL FILE NUMBER
Z-

REGULATORY ACTION NUMBER

EMERGENCY NUMBER

2019-0419-01EE

For use by Office of Administrative Law (OAL) only

ENDORSED - FILED
in the office of the Secretary of State
of the State of California

APR 25 2019

1:52 PM

2019 APR 19 A 10:36
OFFICE OF
ADMINISTRATIVE LAW
REGULATIONS

NOTICE

AGENCY WITH RULEMAKING AUTHORITY

Department of Industrial Relations, Division of Occupational Safety and Health

AGENCY FILE NUMBER (if any)

A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE		TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE	
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other		4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)	
OAL USE ONLY <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn		NOTICE REGISTER NUMBER		PUBLICATION DATE	

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Recording and Reporting of Occupational Injuries and Illnesses	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S) 2018-1025-2
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2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)	
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT AMEND Title 8, California Code of Regulations sections 14300.35 and 14300.41 REPEAL
TITLE(S) 8	

3. TYPE OF FILING			
<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346)	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.	<input checked="" type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
<input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)	<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> File & Print	<input type="checkbox"/> Print Only
<input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))		<input type="checkbox"/> Other (Specify)	


4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)			
<input type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a))	<input type="checkbox"/> Effective on filing with Secretary of State	<input type="checkbox"/> §100 Changes Without Regulatory Effect	<input checked="" type="checkbox"/> Effective other (Specify) May 1, 2019

6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY.			
<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660)	<input type="checkbox"/> Fair Political Practices Commission	<input type="checkbox"/> State Fire Marshal	
<input type="checkbox"/> Other (Specify)			

7. CONTACT PERSON Willie N. Nguyen	TELEPHONE NUMBER (510) 286-7348	FAX NUMBER (Optional)	E-MAIL ADDRESS (Optional) wnghuyen@dir.ca.gov
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8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE 	DATE 04/18/2019
TYPED NAME AND TITLE OF SIGNATORY William Nguyen, Staff Counsel IV	

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

APR 25 2019

Office of Administrative Law

**DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF OCCUPATIONAL SAFETY AND HEALTH**

California Code of Regulations

Title 8, Division 1, Chapter 7, Subchapter 1, Article 2, Sections 14300.35 and 14300.41.

§ 14300.35. Employee Involvement.

- (a) Basic requirement. Your employees and their representatives must be involved in the recordkeeping system in several ways.
- (1) You must inform each employee of how he or she is to report a work-related injury or illness to you.
 - (2) You must provide access to your injury and illness records for your employees and their representatives as described in paragraph (b)(2) of this section.
- (b) Implementation.
- (1) What must I do to make sure that employees report work-related injuries and illnesses to me?
 - (A) You must set up a way for employees to report work-related injuries and illnesses promptly and
 - (B) You must tell each employee how to report work-related injuries and illnesses to you.
 - (2) Do I have to give my employees and their representatives access to the injury and illness records required by this article?

Yes. Your employees, former employees, their personal representatives, and their authorized employee representatives have the right to access the injury and illness records required by this article, with some limitations, as discussed below.

(A) Who is an authorized employee representative?

An authorized employee representative is an authorized collective bargaining agent of employees.

(B) Who is a personal representative of an employee or former employee?

A personal representative is:

1. Any person that the employee or former employee designates as such, in writing; or
2. The legal representative of a deceased or legally incapacitated employee or former employee.

(C) If an employee or his or her representative asks for access to the Cal/OSHA Form 300 and annual summary when do I have to provide it?

When an employee, former employee, personal representative, or authorized employee representative asks for copies of your current or stored Cal/OSHA 300 forms or a current or stored annual summary for an establishment the employee or former employee has worked in, you must give the requester a copy of the relevant Cal/OSHA 300 forms and annual summaries by the end of the next business day.

Exception: If your establishment is in NAICS Code 5121, you must give the requester the information within seven (7) calendar days.

(D) May I remove the names of the employees or any other information from the Cal/OSHA Form 300 before I give copies to an employee, former employee, or employee representative?

No. You must leave the names on the Cal/OSHA Form 300. However, to protect the privacy of injured and ill employees, you may not record the employee's name on the Cal/OSHA Form 300 for certain "privacy concern cases" as specified in Sections 14300.29(b)(6) through 14300.29(b)(9).

(E) If an employee or representative asks for access to the Cal/OSHA 301 Incident Report, when do I have to provide it?

1. When an employee, former employee, or personal representative asks for a copy of the Cal/OSHA Form 301 Incident Report describing an injury or illness to that employee or former employee, you must give the requester a copy of the Cal/OSHA 301 Incident Report containing that information by the end of the next business day.

Exception: If your establishment is in NAICS Code 5121, you must give the requester the information within seven (7) calendar days.

2. When an authorized employee representative asks for copies of the Cal/OSHA 301 Incident Reports or equivalent forms for an establishment where the agent represents employees under a collective bargaining agreement, you must give copies of those forms to the authorized employee representative within seven (7) calendar days but with the following personally identifying information deleted:

1. Name;

2. Address;
3. Date of birth;
4. Date of hire;
5. Gender;
6. Name of physician;
7. Location where treatment was provided;
8. Whether the employee was treated in an emergency room; and
9. Whether the employee was hospitalized overnight as an in-patient.

(F) May I charge for the copies?

No. You may not charge for these copies the first time they are provided. However, if one of the designated persons asks for additional copies, you may assess a reasonable charge for retrieving and copying the records.

- (c) With the exception of provisions to protect the privacy of employees in subsections (b)(2)(D) and (b)(2)(E) of this section and in subsections (b)(6) through (b)(10) in Section 14300.29, nothing in this section shall be deemed to preclude employees and employee representatives from collectively bargaining to obtain access to information relating to occupational injuries and illnesses in addition to the information made available under this section.

Note: Authority cited: Section 6410, Labor Code. Reference: Section 6410, Labor Code.

§ 14300.41. Electronic Submission of Injury and Illness Records to OSHA.

(a) Basic requirement.

- (1) Annual electronic submission of Cal/OSHA injury and illness records by establishments with 250 or more employees. If your establishment had 250 or more employees at any time during the previous calendar year, and this article requires your establishment to keep records, then you must electronically submit information from the Cal/OSHA Form 300A Summary of Work-Related Injuries and Illnesses that you keep under this part to OSHA or OSHA's designee. You must submit the information once a year, no later than the date listed in paragraph (c) of this section of the year after the calendar year covered by the forms.
- (2) Annual electronic submission of Cal/OSHA Form 300A Summary of Work-Related Injuries and Illnesses by establishments with 20 or more employees but fewer than 250 employees in designated industries. If your establishment had 20 or more employees but fewer than 250 employees at any time during the previous calendar year, and your establishment is classified in an industry listed in Appendix H for Title 8 Sections 14300 – 14300.48, then you must electronically submit information from Cal/OSHA Form 300A Summary of Work-Related Injuries and Illnesses to OSHA or OSHA's designee. You must submit the information once a year, no later than the date listed in paragraph (c) of this section of the year after the calendar year covered by the form.
- (3) Electronic submission of records upon notification. Upon notification, you must electronically submit the requested information from your Cal/OSHA injury and illness records to OSHA or OSHA's designee.

(b) Implementation.

- (1) Does every employer have to routinely submit information from the Cal/OSHA injury and illness records to OSHA or its designee?

No, only two categories of employers must routinely submit information from their Cal/OSHA injury and illness records. First, if your establishment had 250 or more employees at any time during the previous calendar year, and this article requires your establishment to keep records, then you must submit the required Cal/OSHA Form 300A information to OSHA once a year. Second, if your establishment had 20 or more employees but fewer than 250 employees at any time during the previous calendar year, and your establishment is classified in an industry listed in Appendix H for Title 8 Sections 14300 – 14300.48, then you must submit the required Cal/OSHA Form 300A information to OSHA once a year. Employers in these two categories must submit the required information by the date listed in paragraph (c) of this section of the year after the calendar year covered by the form or forms (for example, 2018 for the 2017 forms). If you are not in either of these two categories, then you must submit information from the injury and illness records to OSHA only if OSHA notifies you to do so for an individual data collection.

- (2) If I have to submit information under paragraph (a)(1) of this section, do I have to submit all of the information from the recordkeeping form?

Yes, you are required to submit all of the information from the Form 300A.

- (3) Do part-time, seasonal, or temporary workers count as employees in the criteria for number of employees in paragraph (a) of this section?

Yes, each individual employed in the establishment at any time during the calendar year counts as one employee, including full-time, part-time, seasonal, and temporary workers.

- (4) How will OSHA notify me that I must submit information from the injury and illness records as part of an individual data collection under paragraph (a)(3) of this section?

OSHA will notify you by mail if you will have to submit information as part of an individual data collection under paragraph (a)(3). OSHA will also announce individual data collections through publication in the Federal Register and the OSHA newsletter, and announcements on the OSHA Web site. If you are an employer who must routinely submit the information, then OSHA will not notify you about your routine submittal.

- (5) Does this section affect the Division of Occupational Safety and Health's authority to inspect my workplace?

No. Nothing in this section affects the Division of Occupational Safety and Health's statutory authority to investigate conditions related to occupational safety and health.

- (6) How often do I have to submit the information from the injury and illness records?

If you are required to submit information under paragraph (a)(1) or (2) of this section, then you must submit the information once a year, by the date listed in paragraph (c) of this section of the year after the calendar year covered by the form or forms. If you are submitting information because OSHA notified you to submit information as part of an individual data collection under paragraph (a)(3) of this section, then you must submit the information as often as specified in the notification.

- (7) How do I submit the information?

You must submit the information electronically. OSHA will provide a secure Web site for the electronic submission of information. For individual data collections under paragraph (a)(3) of this section, OSHA will include the Web site's location in the notification for the data collection.

- (8) Do I have to submit information if my establishment is partially exempt from keeping Cal/OSHA injury and illness records?

If you are partially exempt from keeping injury and illness records under §§ 14300.1 and/or 14300.2, then you do not have to routinely submit Article 2 information under paragraphs (a)(1) and (2) of this section. You will have to submit information under paragraph (a)(3) of this section if OSHA informs you in writing that it will collect injury and illness information from you. If you receive such a notification, then you must keep the Cal/OSHA injury and illness records required by Article 2 and submit information as directed.

(9) Do I have to submit information if I am located in a State Plan State?

Yes, the requirements apply to employers located in State Plan States.

(10) May an enterprise or corporate office electronically submit Cal/OSHA injury and illness records for its establishment(s)?

Yes, if your enterprise or corporate office had ownership of or control over one or more establishments required to submit information under paragraph (a)(1) or (2) of this section, then the enterprise or corporate office may collect and electronically submit the information for the establishment(s).

(c) Reporting dates.

(1) In 2018, establishments required to submit under paragraph (a)(1) or (2) of this section must submit the required information for 2017 according to the table in this paragraph (c)(1):

Submission year	Establishments submitting under paragraph (a)(1) of this section must submit the required information from this form/these forms:	Establishments submitting under paragraph (a)(2) of this section must submit the required information from this form:	Submission deadline
2018	300A	300A	December 31, 2018

(2) Beginning in 2019, establishments that are required to submit under paragraph (a)(1) or (2) of this section will have to submit all of the required information by March 2 of the year after the calendar year covered by the form or forms (for example, by March 2, 2019, for the forms covering 2018).

Appendix H

Designated Industries for § 14300.41(a)(2) Annual Electronic Submission of Cal/OSHA Form 300A Summary of Work-Related Injuries and Illnesses by Establishments With 20 or More Employees but Fewer Than 250 Employees in Designated Industries

NAICS	Industry
11	Agriculture, forestry, fishing and hunting.
22	Utilities.
23	Construction.
31-33	Manufacturing.
42	Wholesale trade.
4413	Automotive parts, accessories, and tire stores.
4421	Furniture stores.
4422	Home furnishings stores.
4441	Building material and supplies dealers.
4442	Lawn and garden equipment and supplies stores.
4451	Grocery stores.
4452	Specialty food stores.
4521	Department stores.
4529	Other general merchandise stores.
4533	Used merchandise stores.
4542	Vending machine operators.
4543	Direct selling establishments.
4811	Scheduled air transportation.
4841	General freight trucking.
4842	Specialized freight trucking.
4851	Urban transit systems.
4852	Interurban and rural bus transportation.
4853	Taxi and limousine service.

4854	School and employee bus transportation.
4855	Charter bus industry.
4859	Other transit and ground passenger transportation.
4871	Scenic and sightseeing transportation, land.
4881	Support activities for air transportation.
4882	Support activities for rail transportation.
4883	Support activities for water transportation.
4884	Support activities for road transportation.
4889	Other support activities for transportation.
4911	Postal service.
4921	Couriers and express delivery services.
4922	Local messengers and local delivery.
4931	Warehousing and storage.
5152	Cable and other subscription programming.
5311	Lessors of real estate.
5321	Automotive equipment rental and leasing.
5322	Consumer goods rental.
5323	General rental centers.
5617	Services to buildings and dwellings.
5621	Waste collection.
5622	Waste treatment and disposal.
5629	Remediation and other waste management services.
6219	Other ambulatory health care services.
6221	General medical and surgical hospitals.
6222	Psychiatric and substance abuse hospitals.
6223	Specialty (except psychiatric and substance abuse) hospitals.
6231	Nursing care facilities.
6232	Residential mental retardation, mental health and substance abuse facilities.
6233	Community care facilities for the elderly.

6239	Other residential care facilities.
6242	Community food and housing, and emergency and other relief services.
6243	Vocational rehabilitation services.
7111	Performing arts companies.
7112	Spectator sports.
7121	Museums, historical sites, and similar institutions.
7131	Amusement parks and arcades.
7132	Gambling industries.
7211	Traveler accommodation.
7212	RV (recreational vehicle) parks and recreational camps.
7213	Rooming and boarding houses.
7223	Special food services.
8113	Commercial and industrial machinery and equipment (except automotive and electronic) repair and maintenance.
8123	Dry-cleaning and laundry services.

Note: Authority cited: Section 6410, Labor Code. Reference: Section 6410, Labor Code.